In the High Court of Uttaranchal, at Nainital.

Writ Petition No. 198(S/B) of 2006.

Narendra Singh and 30 others ..... Petitioners.

Versus

State of Uttaranchal and 11 others ...Respondents.

Sri M.C. Pant, learned counsel for the petitioners.
Sri K.P. Upadhyaya, learned Standing Counsel for the State.

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 28-6-2006

By means of this writ petition, the petitioners have sought a writ in the nature of Certiorari to quash the impugned notifications dated 26-8-1999 and 2-2-2001, contained in Annexures 1 and 2 to the writ petition. The petitioners also prayed fro issue of a writ in the nature of Mandamus commanding the respondents to pay the petitioners their salary ignoring the ceiling imposed by respondents on the same norms and basis on which the regularly situated employees are getting the salary and other benefits.

2- Brief facts of the case giving rise to the present writ petition are that the petitioners were initially appointed as Beldare in Irrigation Department Yamuna Colony Dehradun under Irrigation Department. Thereafter, the petitioners were giving joining as daily rated workers and on 6-8-2005 they were given joining in work chargeed establishment. Vide impugned orders dated 26-8-1999 and 2-2-2001 the Government has provided specific pay scales to the workcharged employees identical/equivalents to the scales of employees of

regular establishment but imposed ceiling on dearness allowance and other monetary benefits payable to the the petitioners. It was alleged by the respondents that since the petitioners were not regularly appointed employees, hence they were not entitled for the regular salary to be paid for such regularly appointed employees unless and until their services were not regularized.

3- We have heard learned counsel for the petitioners and learned Standing Counsel and perused the entire evidence on record.

4- In so far as the Government Order dated 26-8-1999, is concerned by this G.O. after the amendment, the ceiling has been imposed increasing the limit and by the G.O. dated 2-2-2001 the respondent-authority sanctioned 41% D.A. to the regular as well as the work charged employees of Irrigation Department but ceiling has been imposed that the salary of the work charged employees shall be within the maximum limit as provided by G.O. dated 26-8-1999.

5.- The petitioners have challenged the imposition of ciling on dearness allowance by the G.Os. on various grounds including the ground that no ceiling can be fixed on the dearness allowance as it is paid on the basis of price index.

6- The question relating to payment of dearness allowance for the first time was settled by the Hon'ble Apex Court in 1962 in the case of ***"Hindustan Motors Workers' Union Vs. Hindustan Motors Ltd. And another, (1962) 2 LLj 352.*** In this case, the Apex Court in para-8 has held as under:

> *"The whole purpose of dearness allowance being to neutralize a portion of the increase in the cost of living, it should ordinarily be on a sliding scale and provide for an increase on rise in the cost of living and a decrease on a fall in the case of living."*

7- The above judgment was passed by Hon'ble Three Judges and this judgment has been followed by Four Judges Bench in the year 1963 in the case of ***"Hindustan Times Ltd. Vs. Their Workmen, A.I.R. 1963 Supreme Court, page 1332.*** The Apex Court has referred the aforesaid dictum of the Supreme Court and confirmed the same and held that dearness allowance shall be paid on a sliding scale and it may increase or decrease as increase or decrease in cost of living.

8- Sri K.P. Upadhyaya, learned Standing Counsel submitted that the work charge employees are not entitled for payment of dearness allowance in view of the law laid down by the Hon'ble Apex Court in the case of ***State of U.P. and others Vs. Balram Sahu and others, 2003(1) SCC, page 250 and in the case of State of U.P. and others Vs. Putti Lal, 202, Vol-3, AWC 2375(S.C.).*** The facts and circumstances of these cases are entirely different than that of the facts and circumstances in the present case. The judgments cited by the learned Standing Counsel are relating to payment of minimum of pay scale over which the Hon'ble Apex Court has stated than no allowance shall be payable while in the present case, the Government has decided to pay the dearness allowance. In fact it is being paid but by Government Order darted 26-08-1999, a ceiling limit has been imposed. Hence the argument of learned standing counsel cannot be sustained and is hereby rejected.

9- In view of the logic and concept for payment of dearness allowance as laid down by the Hon'ble Apex Court quoted above, no ceiling limit can be fixed on the dearness allowance and since the Government has taken a decision to pay the dearness allowance to the work charge employees, then it cannot fix a ceiling limit thereon. Thus, the Government Order dated 26-08-1999 fixing the ceiling limit is contrary to the law laid down by

the Hon'ble Apex Court which is law of the land under Article 141 of the Constitution of India and cannot be sustained.

10. It is pertinent to mention here that the Division Bench of this Court vide judgment and order dated 4-3-2006 in Special Appeal No. 66 of 2005 and other connected Special Appeals has already quashed the impugned G.O. dated 26-8-1999.Thus, the Writ petition is allowed. The impugned orders dated 26-8-1999 and 2-2-2001 are hereby quashed. however, it is made clear that the petitioners shall not be paid regular salary but they shall be paid wages on the work charge basis and the full dearness allowance thereon ignoring the ceiling.

(B.C.Kandpal, J) **(P.C. Verma, J.)**

ISB